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The Department of Labor’s Proposed Amendments to the QPAM Exemption



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On July 26, the United States Department of Labor (“DOL”) issued proposed amendments to Prohibited Transaction Class Exemption 84-14, the so-called “QPAM Exemption.” The QPAM Exemption is an important prohibited transaction class exemption widely utilized by asset managers to provide relief for potential prohibited transactions that could arise in transactions between plans subject to ERISA and/or Section 4975 of the Code and financial services and other firms that are “parties in interest” under ERISA or “disqualified persons” under the Code (e.g., fiduciaries, plan sponsors, service providers and entities related to the foregoing by ownership) to such plans.

To utilize the QPAM Exemption, the relevant asset manager must meet the requirements to be a “Qualified Professional Asset Manager,” or “QPAM,” including related to the amount of client assets under management and its capitalization, and must satisfy the relevant conditions of the exemption. The DOL proposed multiple changes to the conditions in Section I (“General Exemption”) of the QPAM Exemption and the requirements to be a QPAM. A significant portion of the amendments relate to the disqualifying conduct provisions of exemption, although the DOL is proposing multiple other revisions.

In the press release with the proposed amendments, the DOL noted in proposing these amendments that since the QPAM Exemption was granted in 1984, “substantial changes have occurred in the financial services industry ... [including] industry consolidation and the increasing global reach of financial services firms in their affiliations and investment strategies....”

According to a senior DOL official, “modernizing changes are overdue.”

The DOL’s proposed changes to the QPAM Exemption include (in summary) the following:

(a) Amending the QPAM Exemption, which currently provides that the exemption ceases to be available to a QPAM for 10 years if the QPAM or an affiliate (within the meaning of the exemption) is convicted of certain felonies listed in the QPAM Exemption or crimes listed in Section 411 of ERISA, to make it clear that the exemption applies also to foreign crimes “substantially equivalent” to the listed U.S. federal or state crimes;

(b) Amending the QPAM Exemption to add additional types of conduct that would result in loss of the exemption. The prohibited additional conduct includes any conduct forming the basis for a non-prosecution or deferred prosecution agreement that, if successfully prosecuted, would have constituted a disqualifying crime, engaging in a systematic pattern or practice of violating the conditions of the QPAM Exemption in connection with otherwise non-exempt prohibited transactions and providing materially misleading information to the DOL in connection with the conditions of the QPAM Exemption;

(c) Adding new provisions (1) requiring the inclusion of certain provisions in a written management agreement relating to what happens in connection with a disqualification of a QPAM (*e.g.*, addressing manager termination and indemnification) and (2) providing for a one-year wind-down period following a manager becoming ineligible to use the QPAM Exemption as a result of engaging in disqualifying conduct;

(d) Requiring a QPAM to notify the DOL that it is relying on the QPAM Exemption and subjecting the QPAM to new recordkeeping standards designed to demonstrate compliance with the QPAM Exemption;

(e) Amending the definition of a “Qualified Professional Asset Manager” to update the assets under management and capitalization requirements; and

(f) Amending Section I(c) of the QPAM Exemption, which requires that the QPAM generally negotiate the terms of, and make the decision to enter into, a covered transaction, to make what the DOL characterizes as clarifying changes to the independence and control the QPAM must possess.

Comments and requests for a public hearing on this proposed amendment must be submitted to the DOL on or before September 26, 2022.
